

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25510  
O/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 24, 2009

MARK C. DILLON, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
L. PRISCILLA HALL, JJ.

---

2008-09529

DECISION & ORDER

People of State of New York, respondent,  
v Jose Turpeau, appellant.

---

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel),  
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Hinrichs, J.), dated September 26, 2008, which, after a hearing, granted the motion of the People of the State of New York for an upward modification of his risk level, and designated him a level three sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs.

Contrary to the defendant's assertion, the proof offered at the hearing showing that he violated probation by failing to report to probation and make his whereabouts known, and that he was convicted of failing to register as a sex offender, provided clear and convincing evidence that he was at an increased risk to re-offend (*see* Correction Law § 168-o). Accordingly, the County Court properly granted the motion of the People of the State of New York for an upward modification of his risk level designation from a level two to a level three sex offender.

DILLON, J.P., SANTUCCI, FLORIO and HALL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

December 22, 2009

PEOPLE OF STATE OF NEW YORK v TURPEAU